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October 22, 2022

VIA ECF

Hon. Rachel P. Kovner
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Joel Burnett aka. Kyle Freistat v. Daniel Gasperetti, et al.
17-CV-5870(RPK)(LB)

Your Honor:

I am one of the attorney representing defendants Detective Gasperetti and Officer Arlistico in the above-referenced matter which is scheduled to begin trial on Wednesday, October 19th, 2022. Defendants respectfully request additional language for the “Deprivation of Constitutional Right Through Excessive Force” section of the jury charge.

Defendants respectfully request that the Court add the following language, “You need not consider whether a defendant used the minimum force in a particular situation; this is not the standard.” (See McLeod v Llano, 2021 US Dist LEXIS 81006, EDNY Apr. 28, 2021, No. 17-CV-6062 (ARR) (RLM) holding that to “[u]se minimum force necessary”—the standard upon which the NYPD would judge whether defendant had violated the Patrol Guide . . . is a less stringent standard than the objective reasonableness test applicable here.”) In plaintiff’s opening statement, counsel for plaintiff quoted these materials stating, nearly verbatim¹ officers are trained to use the minimum necessary force, which needs to be corrected. Adding a curative to the final jury instruction for this statement is the appropriate correction.

¹ Defendants do not have the transcript but, objected at the time, and are confident the transcript would reflect the use of this language.

As such, defendants respectfully request additional language for the “Deprivation of Constitutional Right Through Excessive Force” section of the jury charge.

Respectfully submitted,

/s/ KellyAnne Holohan

KellyAnne Holohan

Assistant Corporation Counsel

Special Federal Litigation Division

cc: **VIA ECF**
All counsels of Record